well as corporate enterprises, laws applicable only to corporations would clearly be unconstitutional.[7] And such was the holding of a recent Indiana case where the statute required railroad and other corporations to answer in damages for injuries to employees caused by superior servants. *Bedford Quarries Co.* v. *Bough*, 80 N. E. Rep. 529. There is no reason in the nature of things why corporations should be treated differently in this respect from large partnerships, such as some express companies, or from individuals.

There is a way, however, in which corporations can be regulated differently from individual enterprises. Today practically every corporation holds its charter subject to amendment, alteration, or repeal by the legislature, at least when the public interest requires it. The law is settled that neither property nor vested rights of a corporation can be taken, without compensation, by the exercise of this power, nor can the aim of the charter be so changed as to alter the original purpose of the grant.[8] But laws such as that in the present case do not transgress any of these limitations, and so could be imposed on domestic corporations under this power of amendment. Similar regulations could be placed upon foreign corporations as a condition precedent to their right to do business within the state, — at least where the business is not interstate commerce, — for a state can exercise unhampered discretion with respect to such privilege.[9] The question then remains, how statutes like the present, general in their wording, are to be construed. Some cases, including the principal case, hold that they cannot be construed as amendments to the incorporation laws, since they are applicable to foreign as well as domestic corporations.[10] Ignoring this objection, other courts construe them as such amendments.[11] Why could not these statutes be held to fulfill at once the twofold function of an amendment to the incorporation laws and a regulation of the permission to foreign corporations to do business within the state? It is a maxim of constitutional law that a decent respect for the legislature and the proper balance of the powers of government require the judiciary not to declare a law unconstitutional unless the necessity is obviously compelling. Therefore, in the absence of statutory[12] or constitutional provisions, such as those of Indiana,[13] regulating the amendment of laws and the enactment of statutes, general laws such as the one under discussion should be upheld on the twofold basis suggested.

ACCEPTING RATE CONCESSIONS UNDER THE ELKINS ACT. — The Elkins Act, amending the Interstate Commerce Act,[1] has received but little judicial interpretation, so that two recent sets of indictments for violation of it must be considered largely experimental. The clause especially concerned pro-

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[7] Ballard *v.* Miss. Cotton Oil Co., *supra*. See Lavallee *v.* R. R., 40 Minn. 249, 252.

[8] Lake Shore, etc., R. R. *v.* Smith, 173 U. S. 684, 698.

[9] Waters-Pierce Oil Co. *v.* Texas, 177 U. S. 28; Hancock Mut. Life Ins. Co. *v.* Warren, 181 U. S. 73, 76.

[10] Johnson *v.* Goodyear Mining Co., 127 Cal. 4.

[11] Shaffer & Munn *v.* Union Mining Co., 55 Md. 74; State *v.* Brown & Sharpe, 18 R. I. 16; R. R. *v.* Paul, 64 Ark. 83; aff. 173 U. S. 404.

[12] See Braceville Coal Co. *v.* People, 147 Ill. 66; State *v.* Haun, 61 Kan. 146.

[13] Burns' Ann. Ind. Stat., §§ 115, 117.

[1] Interstate Commerce Act, 24 Stat. at L. 379; Elkins Act, 32 Stat. at L. 847.

vides that giving or accepting a concession from the established tariff is unlawful, and imposes penalties. *United States* v. *Standard Oil Co. of New York*, U. S. Dist. Ct., W. D. N. Y., April, 1907. One set of indictments alleged that the established tariff for the through shipment of petroleum from Olean to Rutland *via* the Pennsylvania Railroad and three connecting carriers was 19 cents per hundredweight, and that the defendant accepted the rate of 16.1 cents between the same points *via* the Pennsylvania and two connecting carriers, — in fact a less direct route. The defendant demurred, and the court overruled the demurrer. A reasonable reading of the whole statute, combined with the attitude of the Supreme Court that an inequality of service justifies an inequality of charge, requires us to read into the clause stated the words "for a similar service." [2] So the main question [3] under this indictment is whether the defendant received a similar service for a lower rate. Courts lay down the rule very broadly that any inequality of condition or change of circumstance creates a dissimilar service.[4] The court in the present case proceeds on the assumption that services in transporting between the same termini are similar. The first query is whether this assumption is correct in view of the different number of carriers in each route. The only case on the point holds squarely that this is sufficient to justify different rates.[5] Further, the court's assumption omits from consideration the element of time in transit, which has properly been held sufficient to render services dissimilar.[6] Public policy would seem to permit the more circuitous route to charge less, that it might compete for business.[7]

The other set of indictments alleged that the defendants accepted a rate of 17 cents per hundredweight for the transportation of petroleum from Olean to Burlington, knowing that the rate from places near Olean to Burlington was 33 cents per hundredweight. The court overruled the defendant's demurrer on the ground that, since the defendant must be presumed to have known that the difference was unreasonable, a violation of the statute was charged. We must assume that both these rates were published, as nothing was alleged to the contrary. The courts have recently held that the statute constitutes the published rate the only lawful one, which must be adhered to until changed,[8] and that the statute makes it a crime for a shipper to take less than this rate.[9] The necessary inference would seem to be that if the shipper paid this rate, he would be safe. In deciding otherwise in the present case, the court puts him in a curious position. If he knows, or should know from the facts he possesses, that his competitors must pay

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[2] Interstate Com. Com. *v.* B. & O. R. R., 145 U. S. 263; Same *v.* Ala. Midland Ry., 168 U. S. 144; Western Union Tel. Co. *v.* Call Pub. Co., 181 U. S. 92, 97.

[3] This indictment might have been held demurrable for failing to allege that the 16.1 cent rate was not published. Such a ruling would have accorded in spirit with one in United States *v.* Standard Oil Co., 148 Fed. Rep. 719, 727.

[4] For an example of what minor facts are held sufficient to produce dissimilarity, see United States *v.* Chi. & N. W. Ry., 127 Fed. Rep. 785.

[5] Corporation of Birmingham *v.* Manchester, etc., Ry., 10 R. & Can. Tr. Cas. 62. As our statute was modelled after an English one, the courts sanction the use of English cases as precedents. See Interstate Com. Com. *v.* B. & O. R. R., *supra*, 282, 284.

[6] Delaware State Grange *v.* N. Y., etc., R. R., 3 Interst. Com. Rep. 554.

[7] The attitude of the Supreme Court in a recent case, that a carrier should be given great leeway in fixing terms upon which it will agree to carry beyond its own line, supports the view suggested in the present case. Southern Pacific R. R. *v.* Interstate Com. Com., 200 U. S. 536.

[8] United States *v.* Standard Oil Co., 148 Fed. Rep. 719.

[9] United States *v.* Wood, 145 Fed. Rep. 405.

the carrier rates disproportionately high, he commits a crime by paying the only lawful rate. Apparently he must stop shipping until he can get the carrier to charge him more or his competitor less. Even this solicitation for his rival's welfare may not keep him out of crime, for the Interstate Commerce Commission or a jury may easily differ from him on the reasonableness of the new rates, or even declare the original proportion reasonable. The obvious objection to the court's position is well framed by Mr. Justice Brewer: "In order to constitute a crime, the act must be such that the party is able to know in advance whether it is criminal or not. The criminality of an act cannot depend upon whether a jury may think it reasonable or unreasonable." [10] For this reason it would seem necessary to say that the penal section of the statute applies only to discriminations between persons, and not between localities. The aggrieved parties should have used the procedure afforded by the statute to have the proportion made reasonable. Neither set of the indictments alleges all the essentials to constitute what the statute makes the crime, — the acceptance, for a similar service, of a concession from the published and filed rate.

THE LAW GOVERNING THE RECORDING OF AN ASSIGNMENT OF A CHOSE IN ACTION. — There are various views as to what law governs the voluntary assignment of a chose in action.[1] The most prominent two favor respectively the law of the domicile of the creditor and the law of the place of assignment. The cases on the subject are singularly inconclusive. Their language sometimes supports the first view entirely,[2] sometimes the second,[3] or even couples the two as if they were equivalent; [4] but actual decisions, where domicile and place of assignment have not coincided, have not been found. Between the two views, choice must be made according as an assignment is considered a transfer of property or a power of attorney to enforce the chose in action. A transfer of property is governed by the law of its situs.[5] A chose in action, however, being incorporeal, has of course no real situs; yet, relying on the often-quoted maxim that *mobilia personam sequuntur*, courts have said that the assignment should be governed by the law of the creditor's domicile. But an assignment of a chose in action is preferably not to be regarded as a transfer of property. A chose in action is a personal matter; its very essence is the mutual assent of two parties; and there is difficulty in seeing how a new person can be injected into the agreement by one party without the consent of the other. However, the assignor can give his assignee a power of attorney to collect, and contract to allow him to use it; and that this is the nature of an assignment seems substantiated by the history of the law.[6] The existence of this power should be determined wholly by the law of the place where it is given, for

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[10] Tozer *v.* United States, 52 Fed. Rep. 917.

[1] Law of place of performance, see Abt *v.* American, etc., Bk., 159 Ill. 467; law of domicile of debtor, see *In re* Queensland, etc., Co., [1891] 1 Ch. 536. See also Dicey, Conf. of Laws, 533.

[2] Davis *v.* Mills, 99 Fed. Rep. 39; Howard Nat'l Bk. *v.* King, 10 Abb. N. C. (N. Y.) 346. See Story, Conf. of Laws, § 397; 4 Cyc. 63.

[3] Black *v.* Zacharie, 3 How. (U. S.) 483; McClintick *v.* Cummins, 3 McLean (U. S.) 158. See 22 Am. & Eng. Encyc. 1343.

[4] Allen *v.* Bain, 2 Head (Tenn.) 100; Smith *v.* Chicago, etc., Ry., 23 Wis. 267.

[5] Cammell *v.* Sewell, 5 H. & N. 728; Marvin Safe Co. *v.* Norton, 48 N. J. L. 410.

[6] Watson *v.* Bagaley, 12 Pa. St. 164. See 3 HARV. L. REV. 340, 341.